

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appln. No.:	10/053,006	Examiner:	Phuoc H. Nguyen
Confirm. No.:	1220	Group Art Unit:	2143
Filed:	January 23, 2002	Docket No.:	32938.1
Title:	METHOD AND APPARATUS FOR PROVIDING CONTENT OVER A DISTRIBUTED NETWORK		

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**CERTIFICATE OF MAILING**

I hereby certify that this document is being deposited with the United States Postal Service as First Class Mail, in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: *Michelle Cape*

Date: 3/29/03

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT  
BASED ON FAILURE TO RECEIVE OFFICE ACTION  
(37 CFR 1.181(a), MPEP 711.03(C))**

Sir:

This petition is filed in response to the Notice of Abandonment mailed March 22, 2007 (copy enclosed) with regard to the above-referenced matter. The Notice of Abandonment states that the application was abandoned for failure to timely file a proper reply to the Office letter mailed on May 15, 2006.

Applicant herein petitions to withdraw the holding of abandonment in the Notice of Abandonment mailed March 22, 2007. This petition is based on the fact that Applicant did not receive the Office Action to which the Notice of Abandonment refers.

MPEP 711.03(c) requires a showing to establish nonreceipt of an Office communication. Per said section, the practitioner herein states that the Office communication was not received by the practitioner and that a search of the file jacket and docket records indicates that the Office Communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed is attached herein.

**The docket notes that an Appeal Brief was completed on April 10, 2006. The docket shows no further communication from the Office until the Notice of Abandonment was received on April 16, 2007.**

Petitioner therefore requests the Director to withdraw the holding of abandonment in the above-referenced application.

Petitioner also notes that the reason for abandonment states "Called and left a message for Mr. Nelson R. Capes (Reg. No. 37,106) 612-977-8486 regarding the status of the application; however, no response has been received." Mr. Capes never received this message.

Furthermore, on March 15, 2007, Mr. Capes called Examiner Phuoc H. Nguyen (571-272-3919) because he had been notified by another law firm that they had received a call from Examiner Nguyen regarding this application. Examiner Nguyen directed Mr. Capes to file a new Change of Correspondence Address and wait for a notice of abandonment.

Petitioner also encloses, for the Director's information, copies of the Status Inquiry, Change of Correspondence Address, and postcard receipt stamped July 15, 2003 by OIPE. The non-received Office communication was apparently sent to the practitioner's previous address, even though the Office had notice of the change of correspondence address.

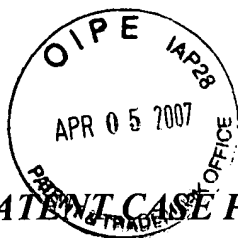
The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 02-3732.

Respectfully submitted,

Dated: 3/29/07

By Nelson R. Capes

Gerald E. Helget (Reg. No. 30,948)  
Nelson R. Capes (Reg. No. 37,106)  
BRIGGS AND MORGAN, P.A.  
2200 IDS Center, 80 South Eighth Street  
Minneapolis, MN 55402  
Telephone: 612-977-8480  
Facsimile: 612-977-8650



# PATENT CASE PRINT REPORT

32938.1

Thursday, March 29, 2007

## CountryName

## StatusDescription

United States

Filed

Regular

Original Filing

National

## PARTY INFORMATION

## DATES AND NUMBERS

**ClientName** DayPort Video Streaming Solutions

**ApplicationDate - No**

1/23/2002

10/053,006

**AgentName**

**GrantDate - PatentNo**

**AttorneyName** Nelson R. Capes

**PublicationDate - No**

**CurrentOwnerName** DayPort Video Streaming Solutions

**ParentFilingDate - No**

**AssociateName**

**ParentGrantDate - Country**

**TotalClaims** 16

**IndClaimsDesigns**

2

**CreateDate** 6/6/2002

**UpdateDate**

3/29/2007 9:53:03 AM

**UpdateUser** stolor

## SYSTEM GENERATED DATES

**TaxBaseDate**

**NextTaxDate**

**ExpirationDate**

## INVENTORS

## Title

METHOD AND APPARATUS FOR PROVIDING CONTENT OVER A DISTRIBUTED NETWORK

## DESCRIPTION

## USER DEFINED TEXT

## ACTION INFORMATION

<b>ActionDueDate</b>	<b>ActionDescription</b>	<b>CompletedDate</b>	<b>TakenDate</b>	<b>DeadlineDate</b>
5/22/2007	Abandon?			
3/22/2007	Notice of abandonment			
4/9/2006	Brief Due	4/10/2006		
2/19/2006	Appeal due - 1st extension	2/9/2006		
2/19/2006	Final rejection - 1st extensio	2/9/2006		

**PATENT CASE PRINT REPORT****32938.1***Thursday, March 29, 2007*

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1/19/2006	Appeal due	1/19/2006
1/19/2006	Final rejection due	1/19/2006
12/19/2005	Response to provoke advisory a	1/19/2006
10/19/2005	Final Rejection	10/19/2005
8/5/2005	Response to 1st office action	7/26/2005
5/5/2005	1st Office Action	5/5/2005
7/23/2003	Published	7/24/2003
4/23/2002	Info Discl. Statement	4/18/2002

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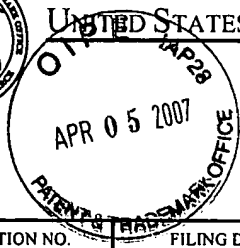
**Criteria** (([ApplicationDate] Between {d'2002-01-23'} AND {d'2007-03-28'}) AND ([ClientName] in ('DayPort Video Streaming Solutions'))

**Order by** PatentMasterID then

**Record Count** 13



UNITED STATES PATENT AND TRADEMARK OFFICE



UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
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www.uspto.gov

*Dayport Video Streaming*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,006	01/23/2002	Cory L. Factor	32938.1	1220

7590  
Kurt J. Niederluecke  
BRIGGS AND MORGAN  
2200 First National Bank Building  
332 Minnesota Street  
Saint Paul, MN 55101

03/22/2007

**RECEIVED**

**MAR 26 2007**

**BRIGGS AND MORGAN, P.A.  
IP DOCKETING DEPT**

EXAMINER
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NGUYEN, PHUOC H

ART UNIT	PAPER NUMBER
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2143

MAIL DATE	DELIVERY MODE
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03/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.



<b>Application No.</b> 10/053,006	<b>Applicant(s)</b> FACTOR, CORY L.	
	<b>Examiner</b> Phuoc H. Nguyen	<b>Art Unit</b> 2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 15 May 2006.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:  
  
Called and left a message for Mr. Nelson R. Capes (Reg. No. 37,106) 612-977-8486 regarding to the status of the application; however, no response has been received.

  
DAVID WILEY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.